U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0343 BLA

FLOYD R. LONG, JR.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 12/07/2016
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Antonio D. Michetti (Diehl, Dluge, Jones & Michetti), Sunbury, Pennsylvania, for claimant.

Emily Goldberg-Kraft (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2013-BLA-05452) of Administrative Law Judge Theresa C. Timlin denying benefits on a claim filed pursuant to the provisions

of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on June 15, 2012.[1]

After crediting claimant with 6.77 years of coal mine employment,[2] the administrative law judge found that the new evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge determined, therefore, that claimant did not demonstrate a change in the applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's determination of the length of claimant's coal mine employment. Claimant further asserts that he has established total disability. The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that his totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

[1] Claimant filed previous claims in 1996 and 2008, both of which were finally denied. Director's Exhibits 1, 2. An administrative law judge denied claimant's 2008 claim because the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2). Director's Exhibit 2. On May 10, 2011, the district director denied claimant's request for modification of the denial of benefits. *Id.*

[2] The record indicates that claimant's coal mine employment was in Pennsylvania. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant's prior claim was denied because he failed to establish that he was totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Director's Exhibit 2. Consequently, to obtain review of the merits of his current claim, claimant had to submit new evidence establishing that he is totally disabled. 20 C.F.R. §725.309(c).

Pursuant to 20 C.F.R. §718.204(b)(2)(i),(ii), the administrative law judge found that the weight of the new pulmonary function studies and arterial blood gas studies did not establish total disability. Decision and Order at 7-8. Additionally, the administrative law judge noted that the record contains no evidence of cor pulmonale with right-sided congestive heart failure and, therefore, found that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). *Id*. at 8.

In considering whether the new medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the medical opinions of Drs. Kraynak and Talati. Dr. Kraynak, claimant's treating physician, opined that claimant is totally disabled by a respiratory impairment, based on the results of a pulmonary function study conducted by Dr. Kraynak on June 17, 2013. Claimant's Exhibit 1 at 20; Claimant's Exhibit 5. Dr. Talati, who examined claimant and administered pulmonary function and blood gas studies twice, opined that claimant has no pulmonary impairment and is not totally disabled. Director's Exhibit 11, 25. The administrative law judge found that Dr. Talati's opinion outweighed that of Dr. Kraynak, because she determined that Dr. Talati's opinion was better supported by the results of the valid objective testing of record.[3] Decision and Order at 10-11. The administrative law judge, therefore, found that the new medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.202(b)(2)(iv). *Id.* at 11. The administrative law judge concluded that all the new evidence, considered together, did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2). *Id*.

[3] When analyzing the new pulmonary function study evidence pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge found that Dr. Kraynak's June 17, 2013 pulmonary function study was invalid. Decision and Order at 7. In so finding, the administrative law judge credited the opinion of a pulmonary specialist who reviewed the study and concluded that it was unacceptable, due to insufficient effort and cooperation. *Id.*; Director's Exhibit 22.

On appeal of the above findings, claimant quotes portions of Dr. Kraynak's opinion, points to his own testimony that he has breathing problems, and asserts that the "evidence submitted does establish disability . . . ." Claimant's Brief at 3 (unpaginated). Claimant, however, alleges no error in the administrative law judge's weighing of the conflicting opinions of Drs. Kraynak and Talati, or in her analysis of the pulmonary function studies and blood gas studies, when she found that the new medical evidence did not establish total disability. Decision and Order at 6-11. Because the Board is not empowered to engage in de novo proceedings or unrestricted review of a case brought before it, the Board must limit its review to contentions of error that are specifically raised by the parties. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-47-48 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987). General assertions of entitlement are insufficient to invoke the Board's review. *See* 20 C.F.R. §802.211(b). Because claimant raises no specific challenge to the administrative law judge's analysis and weighing of the evidence, the administrative law judge's finding that the new evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2) is affirmed.[4]

In light of our affirmance of the administrative law judge's finding that the new evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's determination that claimant did not establish a change in

[4] Moreover, even if we concluded that claimant specifically challenged the administrative law judge's finding at 20 C.F.R. §718.204(b)(2), substantial evidence supports the administrative law judge's determination that the new evidence did not establish total disability. The administrative law judge permissibly found that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), because the June 17, 2013 pulmonary function was invalid, *see Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985), and the qualifying study of December 13, 2010, was found outweighed by the non-qualifying September 20, 2012 and February 19, 2014 studies. Decision and Order at 7. The administrative law judge correctly found that claimant could not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii),(iii), as the new blood gas studies were non-qualifying, and there was no evidence of cor pulmonale with right-sided congestive heart failure. Decision Order at 8. Finally, pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge permissibly discounted Dr. Kraynak's opinion because he relied upon an invalid pulmonary function study, *see Director, OWCP v. Siwiec*, 894 F.2d 635, 639, 13 BLR 2-259, 2-265 (3d Cir. 1990), and acted within her discretion in finding the opinion of Dr. Talati that claimant is not totally disabled to be better supported by the objective evidence. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d. 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986); Decision and Order at 10-11.

the applicable condition of entitlement since the denial of his prior claim.[5] 20 C.F.R. §725.309(c).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

[5] Because claimant did not establish total disability, he is unable to invoke the Section 411(c)(4) presumption of total disability due to pneumoconiosis, 30 U.S.C. §921(c)(4) (2012), or establish entitlement under 20 C.F.R. Part 718. Therefore, we need not address claimant's argument that the administrative law judge erred in determining the length of claimant's coal mine employment. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).